

No. 12414

United States
Court of Appeals
for the Ninth Circuit.

PHIL DAVIS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Northern Division.

FILED

MAR 9 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES OF ATTORNEYS OF RECORD

LEO A. SULLIVAN, ESQ.,
CLIFTON HILDEBRAND, ESQ.,
Attorneys for Appellant.

HARLAN M. THOMPSON, ESQ.,
Attorneys for Appellee.

In the Northern Division of the United States District Court for the Northern District of California.

Cr. No. 10290

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHIL DAVIS,

Defendant.

INFORMATION

(T. 46 USCA, 526 l, 526 m—Reckless and negligent operation of motor boat.)

The United States Attorney charges: That Phil Davis on or about the 27th day of June, 1949, at Lake Tahoe, and while operating a motor boat, to-wit: a speed boat, on the waters of the said Lake Tahoe, in the County of Eldorado, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court then and there being, said Lake Tahoe then and there being a navigable body of water under the jurisdiction of the United States Government, did then and there unlawfully, wilfully and knowingly operate said motor boat in a reckless and negligent manner thereby endangering the life and limb of one Imogene Wittsche and one Janet Lutz.

FRANK J. HENNESSY,
United States Attorney.

By /s/ HARLAN M. THOMPSON,
Ass't U. S. Attorney.

[Endorsed]: Filed July 11, 1949.

[Title of District Court and Cause.]

DEFENDANT'S MOTION TO DISMISS
INFORMATION

The defendant moves that the Information be dismissed on the following grounds:

1. The court is without jurisdiction because the offense, if any, is not cognizable in federal courts under federal law.
2. The court is without jurisdiction because the place of the alleged offense, to-wit, Lake Tahoe, is not a navigable body of water under the jurisdiction of the United States Government.

[Endorsed]: Filed August 2, 1949.

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Tuesday, the 2nd day of August, in the year of our Lord one thousand nine hundred and 49.

Present: The Honorable Dal M. Lemmon,
District Judge.

[Title of Cause.]

Plea. Defendant present with Leo A. Sullivan, his attorney. H. L. Thompson, Asst. U. S. Attorney, present for the U. S. Mr. Sullivan pre-

sented and filed motion to dismiss After hearing Mr. Sullivan and Mr. Thompson, Ordered motion denied. Defendant plead Not Guilt to Information. Ordered case continued to Sept. 27, 1949, for trial. Defendant demanded trial by jury.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find Phil Davis, the defendant at the bar, guilty.

/s/ GEO. M. ANDERSON,
Foreman.

[Endorsed]: Filed October 24, 1949.

[Title of District Court and Cause.]

NOTICE OF INTENTION TO MOVE FOR NEW TRIAL

To the People of the United States and to the United States Attorney for the Northern District of California:

You and each of you will please take notice that the defendant intends to move the above-entitled Court to vacate and set aside the verdict rendered in the above-entitled action, and to grant a new trial of said cause upon the following grounds

materially affecting the substantial rights of said defendant, to-wit:

1. Insufficiency of the evidence to justify the verdict, to-wit: Taken as a whole the evidence was insufficient as a matter of law for the jury to find the defendant guilty as charged.
2. Taken as a whole the evidence was insufficient as a matter of law for the jury to find the defendant guilty of any intent to commit any act charged.
3. Errors in law occurring at the trial and excepted to by the defendant.

Said motion will be made and based upon the records and files in the above-entitled action and upon the minutes of the court.

Dated: November 7th, 1949.

/s/ LEO A. SULLIVAN,

Attorney for Defendant.

[Endorsed]: Filed November 7, 1949.

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Monday, the 7th day of November, in the year of our Lord one thousand nine hundred and 49.

Present: The Honorable Dal M. Lemmon,
District Judge.

UNITED STATES,

vs.

PHIL DAVIS.

No. 10290

JUDGMENT

Defendant present in Court with Leo A. Sullivan, his Attorney. Harlan M. Thompson, Asst. U. S. Attorney, present for the U. S. Motion for new trial and motion for probation denied. Sentence: Six months and fine of \$1500.00. Motion for bail taken under advisement. Ordered *state* of execution granted until Nov. 13th, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Comes now the defendant, Phil Davis, and files his Notice of Appeal, hereby giving notice that he appeals to the Ninth Circuit Court of the United States from the Judgment rendered by the Court after a verdict of guilty, and from the Order of

the Court denying this defendant a Motion for a New Trial, and from each and every appealable order made before and after Judgment.

Dated: November 7th, 1949.

/s/ LEO A. SULLIVAN,
Attorney for Defendant.

[Endorsed]: Filed November 7, 1949.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Defendant, Phil Davis, respectfully *applies the* above-entitled Court for an order directing the phonographic reporter to transcribe all the testimony introduced in the trial of said action, and all objections to questions propounded and rulings thereon, and the entire record of said trial.

The grounds for appeal and the points upon which appellant relies are as follows:

That the Court erred in decisions of questions of law arising during the course of the trial.

That the verdict is contrary to law and evidence.

That in order to present all of the points and grounds relied upon by appellant upon the appeal herein, it will be necessary to have the entire record of said trial above referred to.

Dated: Nov. 7th, 1949.

/s/ LEO A. SULLIVAN,
Attorney for Defendant.

[Endorsed]: Filed November 7, 1949.

[Title of District Court and Cause.]

SUPPLEMENTAL REQUEST FOR RECORD

Defendant, Phil Davis, respectfully applies to the above entitled Court for an order directing the Clerk of said Court to transcribe all motions, rulings, and reports, testimony of witnesses, instructions by the Court to the jury, verdict of the jury, all proceedings had upon motion for new trial and all proceedings had upon motion for dismissal prior to the time of trial.

Defendant further applies for an order directing the Clerk of this Court to prepare the regular clerk's record containing all pleadings, motions, and rulings by the Court upon said motions, and that they be transmitted forthwith to the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ CLIFTON HILDEBRAND,
Attorney for Defendant.

Affidavit of mailing attached.

[Endorsed]: Filed December 12, 1949.

[Title of District Court and Cause.]

GOVERNMENT'S DESIGNATION OF RECORD ON APPEAL

The Government respectfully applies to the above entitled Court for an order directing the Clerk of said Court to include as a portion of the record on appeal the complete transcript of all testimony,

motions, rulings and all other proceedings requested by the defendant, as well as including all exhibits introduced both on behalf of the Government and the defendant at the time of the trial; and that said record setting forth the above matters as well as the exhibits referred to be transmitted forthwith to the United States Circuit Court of Appeals for the Ninth Circuit.

FRANK J. HENNESSY,
United States Attorney.

By /s/ HARLAN M. THOMPSON,
Assistant U. S. Attorney.

[Endorsed]: Filed December 14, 1949.

[Title of District Court and Cause.]

ORDER

Good cause appearing therefor, It Is Hereby Ordered that defendant shall have to and until the 17th day of January, 1950 in which to docket appeal of the above entitled matter with the Clerk of the United States Circuit Court of Appeals.

/s/ DAL M. LEMMON,
Judge.

[Endorsed]: Filed December 14, 1949.

In the District Court of the United States for the
Northern District of California, Northern Di-
vision.

No. 10290

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHIL DAVIS,

Defendant.

Before: Hon. Dal M. Lemmon,
Judge.

REPORTER'S TRANSCRIPT

Tuesday, October 18, 1949.

Appearances:

For the Plaintiff:

HARLAN THOMPSON, ESQ.,
Assistant United States Attorney.

For the Defendant:

LEO SULLIVAN, ESQ.

F. W. BRENZEL

called for the Government, sworn.

The Clerk: Will you give the court and jury
your name, please?

The Witness: F. W. Brenzel.

The Clerk: How do you spell the last name?

The Witness: (Spelling) B-r-e-n-z-e-l.

(Testimony of F. W. Brenzel.)

Direct Examination

By Mr. Thompson:

Q. Mr. Brenzel, do you reside at Lake Tahoe, do you not? A. Yes, sir.

Q. And what is your residence there?

A. Bijou.

Q. How long have you—that's at the south end of the lake? A. Yes, sir.

Q. In that direction. And you are also a Deputy Sheriff of El Dorado County, isn't that true?

A. Yes, sir.

Q. How long have you lived there at Lake Tahoe area? A. Since 1916.

Q. I see. Now, during the period of time that you have lived there at Lake Tahoe, have you had occasion to become familiar generally with the boat operations on Lake Tahoe?

A. Well, to some extent, yes.

Q. During that period of time, have you become familiar with any commercial boat operations on Lake Tahoe? A. Yes, sir.

Q. And will you now briefly relate to us what those operations were within your knowledge?

A. In regards to the commercial, you mean?

Q. Yes, including, for instance, the question of whether there had ever been a mail boat on the lake? A. That's right.

Q. And matters of that kind?

A. That's right. I believe it was called the "Tahoe." and I have even transferred back and

(Testimony of F. W. Brenzel.)

forth from Tahoe City on it myself, and paid my fare on it.

Q. From Tahoe City at the north end of the Lake? A. That's right.

Q. I see. Will you briefly describe to us what that particular boat operation was, Mr. Brenzel?

A. Well, it conveyed passengers three times a week across the lake. Also, the mail and provisions—whatever was needed at either end of the lake, it carried back and forth.

Q. Do you know whether that boat contacted points on the Nevada side of the lake?

A. I believe it did—Glenbrook.

Q. Glenbrook is located on the Nevada side, is it? A. That's right.

Q. Did it contact Zephyr Cove, do you know?

A. Yes, that is right.

Q. What was the name of that boat?

A. "Tahoe."

Q. Have you ever ridden on that boat when it was transporting mail? A. Yes, sir.

Q. Now, how long ago was that, Mr. Brenzel?

A. Must be eight or ten years ago at least.

Q. Can you tell us up to what period of time this operation continued? Can you state the last time, approximately, that this boat operated insofar as carrying mail and other operations?

A. Well, let's see—I imagine about six or seven years ago.

Q. Do you know where that boat is now?

(Testimony of F. W. Brenzel.)

A. I think I do.

Q. Well, what is your understanding in regard to that?

A. I believe it was sunk in the bottom of the lake off from Glenbrook shore there.

Q. How long ago was that?

A. About that time when they ceased operations.

Q. About six years ago? A. Around that.

Q. Now, are you familiar with any other boat operations of that nature that took place there on Lake Tahoe?

A. Well, there was two boats. I don't remember what the name of the other one was, but there were two boats that made those runs.

Q. I see. And did they also carry mail?

A. I believe they did.

Q. Did you ever ride on those boats?

A. I never rode on the other. I rode on this "Tahoe." I believe they alternated on the trips.

Q. Do you know whether those other boats carried pay passengers?

A. I am pretty sure they did.

Q. You don't know of your own knowledge of anyone that did ride on one of the boats by paid passage? A. No, I don't.

Q. Now, Mr. Brenzel, do you know of any operations of that nature that are taking place there on the lake now?

A. Only just the sight-seeing boats, but they don't carry mail.

Q. They don't carry mail? A. No.

(Testimony of F. W. Brenzel.)

Q. Do you know the names of some of those boats? A. No, I don't.

Q. Do you know what points on the lake they —they leave from, and what other points they contact?

A. Well, they have different piers that they leave from, and different schedules for different sight-seeing trips that make different points according to the schedule.

Q. Do you know whether any of those boats leave points on the California side and contact points on the Nevada side? A. Yes, sir.

Q. What points, Mr. Brenzel, do they leave from on the California side, do you know? And then contact the Nevada side?

A. Well, they would leave what they call Young's Pier there or the El Dorado Pier, Globin's, and Connelly's, and Richardson's, Meek's Bay, Emerald Bay—also Patterson's Boat Harbor.

Q. I see. Were you living there at the lake, Mr. Brenzel, when the railroad operated to Lake Tahoe, contacted a point near the Tavern?

A. No, I—contacted the Tavern—I did, yes.

Q. By the way, Mr. Brenzel, do you know the maximum depth concerning Lake Tahoe? The approximate maximum depths?

A. Well, I imagine it varies. Now, which point are you referring to?

Q. The deepest point in the lake.

A. Well, what I have heard is twelve hundred and some feet, the depth.

(Testimony of F. W. Brenzel.)

Q. You have never examined a geodetic survey map to determine that? A. No, no.

* * *

Cross-Examination

By Mr. Sullivan:

Q. Now, Mr. Brenzel, how long ago was the last time that you ever saw any boat on Lake Tahoe that was—I don't mean a speed boat, but a boat that carried passengers?

A. The last time?

Q. Yes, how long ago?

A. Oh, I guess maybe around seven or eight years ago.

Q. Seven or eight years ago. Did you ever hear of that boat carrying any commerce from out and around the area of the lake at all, products of the farmers anywhere at all?

A. The boat that I refer to seven or eight years ago?

Q. Yes.

A. Yes, sir. It even hauled some for me.

Q. What?

A. A case of eggs, and some hams.

Q. You mean the boat was a boat that made a pleasure trip around the lake, and charged so much for the entire trip?

A. I don't know whether it was a pleasure boat. It was a commercial boat, carried passengers.

Q. Was a boat that traveled the lake, and charged each person so much for going around the

(Testimony of F. W. Brenzel.)

lake, is that right? And, if you wanted to, you could stop any place you wanted?

A. It had the mail. If a passenger was for that place, they took them on.

Q. During the past six years, can you tell me of any boat that carries commerce of any kind on that lake? A. No, I can't say that I do.

Q. Can you tell me the name of any boat or any type of vessel that carries the mail on that lake at the present time, or has for the past six years?

A. No.

Q. Can you tell me any boats up there which are for hire, except such as you can see at Pattison's or those which are speed boats which you can rent? That is the only boats up there, isn't that right? Or privately owned pleasure boats, isn't that right?

A. That's right.

Q. And then *on* the month of June, 1949, there wasn't a single boat of any kind or character that carried passengers for hire on that lake, was there?

A. Carried passengers for hire?

Q. In June of this year?

A. Well, there was those speed boats do.

Q. I don't mean those you rent—commercial boat, there was no such boat, was there?

A. Well, they—there was another big boat besides these small speed boats that carried passengers, hauled thirty or forty people or more.

Q. Made a tour of the lake?

A. That's right.

(Testimony of F. W. Brenzel.)

Q. I am talking about such as you described as a commercial boat. There was none? A. No.

Q. There was none that carried commerce?

A. No.

Q. There was none that carried the mail?

A. That's right.

Q. And hadn't been for at least six years, to your knowledge, isn't that right?

A. That's right.

* * *

CHARGE OF THE COURT

The Court takes judicial notice, and you are to take as an established fact that Lake Tahoe is a navigable body of water under the jurisdiction of the United States of America, and that El Dorado County is within the Northern Division of the Northern District of California, and, so, within the jurisdiction of this court.

* * *

PROCEEDINGS ON MOTION TO DISMISS

August 2, 1949, 10:00 o'Clock a.m.

The Clerk: United States vs. Phil Davis.

Mr. Sullivan: This matter is on to plead.

At this time I wish to file a motion to dismiss the information on the ground of lack of jurisdiction for certain legal reasons. I have already served a copy on the United States Attorney this morning.

The Court: You have served the United States Attorney with a copy?

Mr. Sullivan: This morning.

Mr. Thompson: That is correct.

The Court: Are you prepared to proceed on the hearing of the matter?

Mr. Thompson: In answer to that, your Honor, the Government feels that the question concerning Lake Tahoe as far as being a navigable body of water coming under the jurisdiction of the United States Government is one that needs very little argument.

The Court: You are now prepared to go ahead with the argument?

Mr. Thompson: I haven't the decisions before me at this time, your Honor. I would be prepared within a very short time.

The Court: Suppose I put it over to two o'clock.

Mr. Thompson: That would be agreeable.

The Court: Two o'clock.

Mr. Sullivan: Then will it go over to plead, too, your Honor?

The Court: Yes.

(Thereupon the further hearing of this matter was continued to two o'clock p.m., at which time the following proceedings were had:)

The Clerk: United States vs. Phil Davis.

Mr. Sullivan: May I inquire has your Honor had an opportunity to read the motion?

The Court: Yes.

Mr. Sullivan: I do not wish to add any oral argument to that. All I can say is incorporated in this.

The Court: Mr. Sullivan, I don't think this court is in a position to take judicial notice of whether or not Lake Tahoe is a navigable body of water. It seems to me that is a matter of proof. Apparently the cases you cited to me hold that not only must it be a body of water capable of navigation but it must be at least potentially useful as a navigable body of water. I do not want to pass on that.

A quarter century ago judicial notice would be taken of the fact that was a navigable body of water, but I know the building of the highway around the lake has changed conditions. The steamer upon which people depended for transportation of themselves and property is history. I do not know whether there is any transportation by water or not on that lake, and it seems to me it is a matter of proof.

I will say to the United States Attorney that unless there is proof that it is a navigable body of water I will have to dismiss the case.

Mr. Thompson: You mean in connection with Mr. Davis' motion?

The Court: No; I say if in the trial of the case it is not proved to be a navigable body of water I will have to dismiss the case. The Court would not have jurisdiction if it was not a navigable body of water.

Mr. Thompson: You do not feel, your Honor, that under the rule of law—pardon me—258 U. S. 554, that navigability in fact is the test of navigability in law, that under such rule of law your Honor is in a position at this time to take cognizance of the characteristics of the use of Lake Tahoe waters, and is in a position to make a ruling as a matter of law—

Mr. Sullivan: Navigable in fact; that is our position exactly. Navigable in fact is what it means. It isn't used for commerce—

The Court: I do not think the test is whether it is capable of use for commercial purposes. It should be used for commercial purposes or be potentially useful for that purpose.

Mr. Thompson: Your Honor does not believe that it has to be shown that it is being used necessarily for commercial purposes at the present time?

The Court: No, not presently. Potentially useful for that purpose.

Mr. Thompson: However, it is common knowledge, which I do not believe Mr. Sullivan would dispute, that Lake Tahoe is commonly used by boats for hire.

Mr. Sullivan: Boats for hire—this decision is right directly in point on that.

The Court: If it is used for pleasure that does not convert it from a non-navigable to a navigable body of water.

Mr. Thompson: Your Honor is taking the posi-

tion that it has to be shown that commercial uses are being made—

The Court: I say it has to be used commercially or potentially useful commercially.

Mr. Thompson: You don't feel that the circumstances are such that you can take—

The Court: These cases that are submitted to me, I haven't read them, I haven't had the time—

Mr. Thompson: You don't think the circumstances are such that you can take judicial notice of the fact that Lake Tahoe is so used?

The Court: I don't know, I don't know. There is no evidence Lake Tahoe is used for commercial purposes. I don't know whether it is commonly known it is used for commercial purposes.

Mr. Sullivan: Mr. Thompson, as a matter of act it isn't.

Mr. Thompson: Of course, there may be dispute as to what is meant by commercial purposes.

Mr. Sullivan: Well, this case holds—the only case in the United States involving a prosecution of this kind, a Missouri case—the boats were hired, your Honor, by duck hunters—that is commercial, but that doesn't determine it to be navigable waters at all.

Mr. Thompson: Let me read for a moment, your Honor, an excerpt from the case of *Mintzer v. North American Dredging Company*, 242 Federal 553, affirmed in 245 Federal 297: "While a court may take judicial notice of the navigability of waters

within its jurisdiction, the navigability of those of a more insignificant character must be established by evidence."

I take the position that Lake Tahoe would come under the former category, being a large, well known body of water.

Also in the case of *Ortel vs. Stone*, 205 Pacific, 1055, it was held that a lake three-quarters of a mile in length and one-eighth of a mile in width and having an area of about 40 acres and an ordinary depth of from ten to fifty feet is navigable.

Mr. Sullivan: Sure; if it is used for commerce it is.

Mr. Thompson: Your Honor, my examination of the decisions cited in Title 33, which is Navigation and Navigable Waters, do not from my observation point to the matter—

The Court: Well, I need not go further in this matter today than to say this: In any event, it is a matter of proof, if the Court cannot take judicial notice.

Mr. Sullivan: That is correct.

The Court: Assuming I cannot take judicial notice you will have to prove it is a navigable body of water. So I feel the motion to dismiss should be denied.

Mr. Thompson: Yes. However, Your Honor—

The Court: If in the trial of the case you cannot convince me that I can take judicial notice that this is a navigable body of water then you will have to prove that it is.

Mr. Thompson: In connection with the burden of proof that is on the Government, is it necessary that I prove that Lake Tahoe is presently used or potentially capable of being used commercially?

The Court: I do not have to rule on that. You better be prepared, however, to prove it.

The motion to dismiss will be denied.

CERTIFICATE OF REPORTER

I, Clarence E. Wight, Official Reporter, certify that the foregoing pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ CLARENCE F. WIGHT.

[Endorsed]: Filed Jan. 17, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals or certified copies filed in the Court in the above entitled case, and that they constitute the record on appeal herein as designated by the parties herein.

Information.

Defendant's motion to dismiss information.

Minute order of August 2, 1949.

Minute order of November 7, 1949.

Verdict.

Notice of intention to move for a new trial.

Notice of appeal.

Designation of record, etc.

Supplemental request for record.

Government's designation of record on appeal.

Order extending time to docket appeal.

Seven Volumes Reporters Transcript.

U. S. Exhibits 1 to 8 incl., 9a-9b-9c, 10 and 11.

Defendants Exhibits A, B and C.

In Witness Whereof, I have hereunto set my hand and the seal of said Court this 14th day of January, 1950.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ C. C. EVENSEN,
Deputy Clerk.

[Endorsed]: No. 12414. United States Court of Appeals for the Ninth Circuit. Phil Davis, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed January 17, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 12414

The PEOPLE OF THE UNITED STATES,

vs.

PHIL DAVIS.

SUBSTITUTION OF ATTORNEYS

I, the undersigned, hereby substitute Clifton Hildebrand, Esq., in the place and stead of Leo A. Sullivan, Esq.

Dated: December 1, 1949.

/s/ PHIL DAVIS.

I hereby accept the foregoing substitution.

/s/ CLIFTON HILDEBRAND.

I hereby consent to the foregoing substitution.

/s/ LEO A. SULLIVAN.

[Endorsed]: Filed December 2, 1949.

At a Stated Term, to wit: The October Term, 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the fifth day of December in the year of our Lord one thousand nine hundred and forty-nine.

Present: Honorable William Denman, Chief Judge,
Presiding, Honorable William E. Orr,
Circuit Judge, Honorable Walter L. Pope,
Circuit Judge.

[Title of Cause.]

ORDER SUBMITTING AND GRANTING MOTION FOR ADMISSION TO BAIL PENDING APPEAL

Ordered motion of appellant for admission to bail pending appeal presented by Mr. Sheridan Downey, Jr., counsel for appellant, in support of said motion, and by Mr. Harlan Thompson, Assistant United States Attorney, counsel for appellee, in opposition thereto, and submitted to the court for consideration and decision.

Upon consideration thereof, It Is Further Ordered that said motion, be, and hereby is granted, and that appellant be admitted to bail pending determination of his appeal herein in the amount of One Thousand Dollars (\$1,000.00), the bail bond to

be conditioned as required by law, to be approved by the United States Attorney and the trial judge, and to be filed with the clerk of the District Court.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT PHIL DAVIS WILL RELY UPON THIS APPEAL

1. That the District Court was without jurisdiction to try appellant for the crime charged.
2. That the trial court was in error in charging the trial jury that the United States had jurisdiction over the waters of Lake Tahoe.

Respectfully submitted,

/s/ CLIFTON HILDEBRAND,
Attorney for Appellant.

[Endorsed]: Filed January 19, 1950.

[Title of Court of Appeals and Cause.]

DESIGNATION OF PORTION OF RECORD TO
BE PRINTED IN BEHALF OF APPEL-
LANT PHIL DAVIS

Appellant, Phil Davis, requests the Clerk of the above court to have the following portions of the record printed:

1. That portion of the testimony of Witness F. W. Brenzel contained in reporter's transcript page 482, line 11, through and including page 487, line 10.
2. That portion of the testimony of Witness F. W. Brenzel contained in reporter's transcript, page 532, line 4, through and including page 534, line 12.
3. That portion of the Court's instructions to the jury found in the reporter's transcript, page 843, line 22, through and including page 844, line 2.
4. All those proceedings had on the 2nd day of August, 1949, being the proceedings on Motion to Dismiss for Want of Jurisdiction and contained in reporter's supplemental transcript pages 2, through and including page 7.

Respectfully submitted.

/s/ CLIFTON HILDEBRAND.

Affidavit of mailing attached.

[Endorsed]: Filed January 19, 1950.